(Spl.-H.C.A.S.,C.D.,78-e)

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF BOMBAY AT GOA
APPELLATE SIDE

WRIT PETITION NO. 275 OF 2004

Office Note, Office Memoranda of Quorum, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Mr. S. D. Lotlikar, Senior Advocate with Mr. R. Sardessai, advocate for the petitioners.

Mr. S. Vahidulla, advocate for respondent no.4.

CORAM : B. H.MARLAPALLE, J.

DATE : 24th September, 2004.

P.C.:

Heard Mr. Lotlikar, learned Senior Counsel with Mr. Sardessai, advocate for the petitioners and Mr. Vahidulla, learned advocate for respondent no.4.

2. The petitioners moved Regular Civil Suit No.45/2003 and prayed for a permanent injunction restraining the respondent no.4 from carrying out any construction in the suit plot, i.e. survey no.49/2 bearing matriz no.452 of Goa Velha village and in the said suit they had moved an application for

temporary injunction which was rejected by the trial Court. The plaintiffs therefore filed Misc. Civil Appeal No.112/2003 before the District Judge and the same was also dismissed by the learned Ad-hoc Additional District Judge at Mapusa, on 16th April, 2004. Hence this petition.

3. A perusal of the lower Appellate Court's order shows that the plaintiffs could not prove prima facie, that they were the co-owners of the suit property and the reasoning adopted by the said Court showed that the property in survey no.49/2 named as "Vateacopo" could not be certainly said to be the same as the property covered by the sale deed dated 21.7.1943 under description no.7717 and named as "Vitealem" or "Vateacopo". The Court had also perused the record of the rights of the properties and could not note any comparison between the boundaries of the two

properties. These are prima facie findings and both the courts below did not find a case in favour of the petitioners to grant temporary injunction. Under such circumstances there is no reason to interfere with the concurrent view taken by the courts below under supervisory jurisdiction of this Court in a petition under Article 227 of the Constitution of India.

4. Nevertheless, the findings of the court below are only of prima facie nature and the plaintiffs are not precluded from bringing on record such evidence, which may support their case of joint ownership of the suit property and the suit pending will have to be decided on its own merits and in case without being influenced by the prima facie findings.

5. Hence, the Writ Petition is rejected summarily, but at the same time, it is directed that the

defendants shall maintain status quo, save and except for the necessary repairs to be carried out in respect of the suit property until the suit is decided. Trial of the suit expedited.

B. H. MARLAPALLE, J.

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